

1702327 (Migration) [2018] AATA 2908 (30 April 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1702327
MEMBER:	Adrienne Millbank
DATE:	30 April 2018
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 30 April 2018 at 5:00pm

CATCHWORDS

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary)) – Whether a genuine de facto relationship exists – Joint household finances – No pooling of financial resources – Financial aspects not indicative of a genuine de facto relationship – Evidence of joint household contrived for visa application – Limited social aspects of relationship – Significant history of non-compliance with migration laws – Evidence indicates limited commitment – Whether compelling reasons exist for waving Schedule 3 criteria – Where sponsor has various physical and mental illnesses – Degree of illnesses not significant enough to be considered compelling – Decision affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5CB, 65

Migration Regulations 1994 (Cth), r 1.09A, Schedule 2, cl 820.211, Schedule 3, 3001

CASES

Babicci v MIMIA (2005) 141 FCR 285

MZYPZ v MIAC [2012] FCA 478

Waensila v MIBP [2016] FCAFC 32

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 25 January 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 8 November 2016 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211. The delegate found that the applicant did not meet cl.820.211(2)(a) and cl.820.211(d)(ii). The delegate was not satisfied that he applicant was in a genuine de facto relationship with the sponsor, and did not find that there were compelling reasons to waive the Schedule 3 criteria that applied to the applicant because of his five and a half-year period of illegal stay in the country.
4. The applicant appeared before the Tribunal on 5 April 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor.
5. The applicant was represented in relation to the review by his registered migration agent, who attended the hearing.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The applicant was born in India in [a particular year]. His immigration history is as follows:
 - He first arrived in Australia on 17 July 2008 as the holder of a Student (subclass 572) visa.
 - On 10 December 2009 his Student (subclass 572) visa was cancelled, for non-attendance.
 - On 20 December 2009 he lodged an appeal of the decision to cancel his Student visa with the then Migration Review Tribunal (MRT).
 - On 16 April 2010 the MRT affirmed the delegate's decision to cancel his Student visa.
 - On 16 April and 28 July 2015 he lodged applications for a Protection visa, which were deemed invalid.
 - On 26 August 2015 he made a valid application for a Protection (subclass 866) visa and was granted a Bridging C visa in association with this application.
 - On 19 November 2015 his application for a Protection visa was refused.
 - On 23 December 2015 he lodged an appeal of the decision with the Tribunal.
 - On 8 November 2016 he lodged the application for a Partner (subclass 820/801) visa.
 - On 16 November 2016 he withdrew his application for review of the decision to refuse him a Protection visa with the Tribunal.
8. The applicant has not left Australia since arriving on his Student visa on 17 July 2008. He has not held a substantive visa since his Student visa was cancelled on 10 December 2009, and was unlawfully in the country from 10 December 2009–26 August 2015.

9. The sponsor was born in [Australia] in [a particular year]. The parties claim that they met at a bar in [City 1] [in] October 2014, and entered into a committed de facto relationship when they moved in together in August 2015. They obtained a [Relationship] Certificate in [City 1] [in] November 2015.
10. The issues in the present case are whether the applicant was in a genuine de facto relationship with the sponsor at the time of application and this decision; and whether there are compelling reasons to waive the Schedule 3 criteria.

Whether the parties are in a spouse or de facto relationship

11. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the de facto partner of the sponsor who is an Australian citizen.

Are the parties in a de facto relationship?

12. As the parties are not married to each other under a marriage that is valid for the purposes of the Act, they cannot satisfy an essential requirement of a spouse relationship, but may meet the criteria on the basis of being in a de facto relationship as defined in s.5CB of the Act. A person is in a de facto relationship with another person to whom they are not married if they have a mutual commitment to a shared life to the exclusion of all others, the relationship is genuine and continuing, the couple live together, or do not live separately and apart on a permanent basis, and the couple are not related by family: s.5CB(2).
13. In forming an opinion whether they are in a de facto relationship consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.09A(3) which is attached to this decision.

Financial aspects of the relationship

14. Evidence was provided that the parties opened a joint bank account on 24 September 2015. Statements of transactions provided from 2015 to 2017 showed regular transfers, usually labelled 'rent' or 'bills', of \$500, by both parties, into this account, and show that it was used to pay rent and utilities. At hearing the parties confirmed that the account was used to cover their shared-house costs.
15. Statements of transactions were also provided for the parties' own personal bank accounts. These showed that the earnings of each of the parties are deposited into their personal accounts, and they use these accounts for personal expenses such as clothes buying and transport.
16. At hearing, the Tribunal asked the applicant the source of some large deposits, of over \$1000, into his account, that were not his salary. He stated that these were transfers from his own personal savings account. He stated that the sponsor also had her own personal savings account. He advised that he had about \$7000 in savings, and that he wasn't sure how much the sponsor had in her account, but thought that it was about \$14,000 or \$20,000.
17. When asked what liabilities they had, the applicant stated that he owed his father \$17,000 from his Student visa days, and the sponsor stated that she was paying off her student loan. They stated that they had no joint liabilities. When asked what assets they had, they stated

that they each had a car. They confirmed that their cars were registered in their own names. They stated that they had no joint assets.

18. The applicant stated that he had not repaid any of the money he owed his father. As discussed below, he claimed that he did not speak to his family and could not return to India because his father, who loaned him money to come to Australia and enrol in [Course 1], was cross about his son's visa being cancelled and his son not completing his course. The Tribunal asked the parties why they didn't pool their earnings and savings, so the applicant could undertake [Course 1]; repay his father; and introduce his life partner to his family. The applicant stated that he could not expect the sponsor to contribute any financial support to help him do [Course 1], or so he could repay his debt to his father. The sponsor stated that she needed her money to pay off her HECS loan.
19. Because the parties each deposited the same amount into a shared account for the purpose of meeting their shared house expenses, the Tribunal finds that while they shared day-to-day household expenses, they did this in a manner reflecting a house-share arrangement rather than a de facto relationship. Based on the evidence given by the parties, the Tribunal finds that they: have no assets or liabilities in common; have not pooled their financial resources; and have no legal obligations owed to the other party. Based also on the fact that they indicated at hearing an unpreparedness to ask or provide each other with financial support, even for the purpose of reconciling with family, the Tribunal finds that the financial aspects of the relationship are not indicative of a genuine de facto relationship.

Nature of the household

20. Evidence was provided that the parties have jointly signed leases for two rental properties, and that the applicant was listed as an occupant on a lease the sponsor signed with her sister in 2015. At hearing the applicant stated that he tried to get himself included as a joint tenant on this lease, but that because of his visa status and lack of work rights he was unable to. When asked why he tried to do this, he stated that it was for the purpose of obtaining evidence of cohabitation for the visa application.
21. Copies of mail addressed to each of the parties at the same address were provided. Copies of electricity bills, in joint names, and car insurance in joint names, were also provided.
22. At hearing the applicant claimed that at the time of decision the parties were not sharing the house with another tenant, and that he did all of the cooking and cleaning in the house, because the sponsor suffers from back pain. The sponsor stated that she did the shopping. No evidence apart from the claims of the parties was provided that the sponsor's sciatica has rendered her unable to manage day-to-day activities such as working at her [job], house cleaning and cooking, and the Tribunal found the applicant's claim to do all of the housework apart from the shopping, unconvincing.
23. The parties confirmed that they have purchased no significant household items together. They do not have children, but claimed to intend to have a family in the future.
24. The Tribunal accepts that the parties have lived in the same house or apartment; that they have signed up with an electricity supplier in joint names; and that they have purchased insurance for a car in both names. Because the applicant sought to include himself on a joint lease for the purpose of the visa application, the Tribunal is of the view that the signing up for utilities and car insurance in joint names, relatively easy and affordable indicators of relationship, was also for the purpose of the visa application. On the evidence provided, the Tribunal does not find that the parties have established and managed a joint household as a genuine de facto couple.

Social aspects of the relationship

25. Statutory declarations were provided from the sponsor's mother and sister. The sponsor's mother declared that she was in phone contact with the sponsor weekly and knew the sponsor to be in a genuine long-term partnership. The sponsor's sister declared that she saw her sister every two weeks, and knew her to be in 'a genuine de facto relationship', and the parties to be 'committed to sharing their lives together', buying a house and starting a family. A statutory declaration was provided by a former housemate of the applicant, who declared that the parties were in a 'continuing relationship of over a year', were 'mutually committed emotionally and financially', and that their relationship was 'genuine and long-lasting'. A statutory declaration was provided by former student friend of the applicant, advising that the parties were 'living together in a continuing de facto relationship', which was of a 'genuine and ongoing nature'. The Tribunal gives little weight to these declarations, because they are general in nature and/or their wording appears chosen for the purpose of addressing the visa requirements rather than describing a relationship.
26. Photos were provided of the parties together with members of the sponsor's family in [City 1], [and other locations]. At hearing the sponsor stated that her mother lives in [another state]; her sister and brother-in-law live [in the same state], and her father and step-mother live in [another state]. The applicant confirmed that he has met all of the sponsor's immediate family members.
27. When asked whether she had talked with any of the applicant's family in India, over the phone or via an internet application such as Skype, the sponsor stated that she has not. The applicant stated that he has had no contact with his family since 2008, because, as noted, his father was cross with him about his [studies]. As discussed above, the Tribunal asked the parties why the applicant had not simply completed [Course 1], and why the parties had not simply arranged to repay the applicant's father the money he provided for the applicant to come to Australia as a student in 2008. The Tribunal put to the parties that, given their declared commitment to a shared life and plans to have children together, they could thus reconcile with the applicant's family; visit the applicant's family; and hold a wedding in India with the applicant's family.
28. The Tribunal found the applicant evasive and non-responsive when asked such questions. He repeated a number of times that he has no contact with his family in India, but provided no reasons for this beyond his father being cross about the [course] he enrolled in in 2008. The Tribunal finds this an inadequate explanation of why the applicant has not introduced the sponsor, whom he claims is his life partner, to his family in India. After further questioning on why he would not have spoken even to one of his brothers or sisters since 2008, the applicant stated that he had in fact told a brother in India that he was in a relationship. He then acknowledged that this brother would have told the rest of the family. Based on the evidence given by the parties, the Tribunal finds that the relationship has not been fully recognised by the applicant's family.
29. Regarding the applicant's Protection visa application, which was lodged on the basis of fearing harm from his father if he returned to India, the applicant acknowledged that he in fact had no fear that his father would physically harm him, but claimed he was fearful in an emotional sense, of his father's disapproval. Despite this claimed concern, he stated, however, as noted above, that he has repaid his father none of the money he owes him. When asked why he lodged a claim for a Protection visa that he knew to be ill-founded, he stated that his 'options' to stay in the country were limited and the agent told him to. He stated that he withdrew his appeal to the Tribunal because his agent had advised him that his application was weak. He stated also that the sponsor volunteered to sponsor him on a Partner visa.

30. The applicant has shown himself prepared to flout Australia's immigration laws by not meeting the requirements of his Student visa, and remaining in the country illegally for years. He has shown himself prepared to lodge an ill-founded visa application (the Protection visa application) in pursuit of a migration outcome. The Tribunal accepts that the parties have represented themselves to members of the sponsor's family as being in a relationship; that they have undertaken social activities including attending the theatre and cinema together; and that friends of the applicant support his visa application.
31. It is the view of the Tribunal however that the evidence provided of social activities together and with the sponsor's family members was organised and documented with the visa application in mind. The applicant has not represented himself to his family in India as being in a genuine relationship with the sponsor, and the Tribunal places significant weight on this. In the absence of any credible alternative explanation as to why the applicant has not represented himself to his family as in a relationship, the Tribunal is of the view that this is because he is not in a genuine relationship with the sponsor.

Nature of persons' commitment to each other

32. As noted, the parties registered their relationship in the [City 1] registry office on 17 November 2015. They provided evidence that they have travelled together [to] visit the sponsor's father and step-mother, and to [another city].
33. Evidence was provided that the sponsor has named the applicant as beneficiary in her superannuation account, and that he was listed as her partner on a tax statement.
34. As discussed above, when asked why the parties didn't pool their resources; pay for another [course]; pay at least some of the debt the applicant owes his father; and reconcile with the applicant's family in India, the sponsor advised that she needed her personal income and savings for her own student debt, and the applicant stated that this was not something he felt he could ask of the sponsor. The parties confirmed that they have never discussed such a possibility. The Tribunal finds the fact that the parties have not even discussed such a possibility, involving pooling of their resources and reconciling with the applicant's family, to indicate that they are not in a genuine relationship. The Tribunal is of the view, as discussed above, that the easier markers of relationship, involving less personal commitment, such as joint travel and superannuation and tax statements, were organised for the purpose of the visa application.
35. The Tribunal accepts that the parties have shared a house for several years and that during this time they have travelled together within Australia and provided each other with companionship and emotional support. For the reasons discussed above, the Tribunal does not accept that this companionship and support has been in the context of a genuine relationship. The applicant has shown himself prepared to lodge visa applications on false pretences in pursuit of a migration outcome, and the Tribunal does not find, on the evidence provided, that the parties see the relationship as long term.
36. Having considered the evidence and the circumstances of the applicant, the Tribunal is not satisfied that the parties have a mutual commitment to shared life to the exclusion of others; and that they are in a genuine and continuing relationship.
37. On the basis of the above the Tribunal is not satisfied that the requirements of s.5CB(2) are met at the time the visa application was made or the time of this decision.
38. Therefore the applicant does not meet cl.820.211(2)(a) or cl.820.221.

Does the applicant meet Schedule 3 criteria, or should those criteria be waived?

39. An applicant who is not the holder of a substantive visa at the time of application must meet certain criteria in Schedule 3 to the Regulations. With limited exceptions not relevant to this case, he or she must satisfy Schedule 3 criteria 3001, 3003, and 3004 unless the Minister is satisfied that there are compelling reasons for not applying those criteria: cl.820.211(2)(d).
40. It is not in dispute that the applicant in the present case did not have a substantive visa at the time of application. As the applicant did not enter Australia as the holder of a Subclass 995 visa or special purpose visa, the issue in the present case is whether the applicant satisfies the Schedule 3 criteria unless there are compelling reasons for not applying those criteria. These criteria are set out in the attachment to this decision.

Criterion 3001

41. In order to satisfy criterion 3001, the application for the visa must have been lodged within 28 days of the relevant day. The 'relevant day' is defined in 3001(2), as set out in the attachment to this decision.
42. As noted above, the applicant has not left Australia since arriving on his Student visa on 17 July 2008. He has not held a substantive visa since his Student visa was cancelled on 10 December 2009, and he was unlawfully in the country from 10 December 2009–26 August 2015.
43. As the visa application was not made within 28 days of the relevant day, the applicant does not satisfy criterion 3001.

Compelling reasons

44. As the Tribunal has found that the applicant does not meet the relevant Schedule 3 criteria, it is required to consider whether there are compelling reasons for not applying the criteria.
45. The expression 'compelling reasons' is not defined for these purposes. However, the reasons should be sufficiently convincing to move the decision-maker to exercise its discretion to waive the requisite criteria and the circumstances must be sufficiently powerful to lead a decision-maker to make a positive finding in favour of waiving the required criteria: *MZYPZ v MIAC* [2012] FCA 478 at [10]; *Babici v MIMIA* (2005) 141 FCR 285 at [24]. Circumstances which constitute 'compelling reasons' for not applying the Schedule 3 criteria can arise at any time, including after the visa application is made: *Waensila v MIBP* [2016] FCAFC 32.
46. The parties claimed the following compelling circumstances: they are in a genuine de facto relationship of four years duration; the sponsor suffers from illness, including back problems and mental ill-health, which render her dependent on the support of the applicant; the applicant cannot return to his family in India because his father remains cross with him and he has no-where else to go; the sponsor cannot accompany the applicant to India because she has employment here, would be separated from her health care providers, and could lapse into depression; and the applicant would suffer financially because he would struggle to find employment in India after living in Australia for the last decade, and he would have to pay more visa costs.
47. As the Tribunal is not satisfied that the parties were in a genuine de facto relationship at the time of application or decision, it does not accept the parties' relationship is a compelling reason to waive the Schedule 3 criteria.

48. The sponsor claimed that she suffers from lower-back pain, sciatica, anxiety and depression. She provided copies of three medical certificates certifying that she was unfit for work because of a medical condition for three days in 2017, four days in 2017, and five days in 2018. She provided evidence of consultations with general practitioners regarding her lower back pain and sciatica, and prescriptions of paracetamol/codeine. She provided evidence of massage appointments; a report from a physiotherapist which advised exercise and other self-management techniques such as stretching; reports of X-rays which found no fractures or abnormalities in her ankle or her spine; and a receipt for the removal of a skin cancer. Based on the evidence provided, the Tribunal is not satisfied that the sponsor's medical conditions have been such that she has been unable to go to work or do housework or shopping or cope with everyday life without the support of the applicant.
49. A copy of a medical certificate was provided by the sponsor's general practitioner, in which he states that the applicant has suffered 'a long history of chronic back pain and sciatic nerve compression' resulting in 'regular bouts of incapacitating pain'. He advises that (the sponsor) 'requires full-time care on those days which is kindly provided by her de-facto partner (the applicant)'. The Tribunal places little weight on this advice because it is brief and vague in nature and was obtained for the purpose of the visa application. The Tribunal notes that it was provided by the medical practitioner who found the applicant to be unfit for work for only 12 days during the last two years.
50. The Tribunal accepts that the sponsor has suffered from back pain and sciatica, and that the applicant has helped her, as he claimed in his written statements, with massage and hot compresses. The Tribunal does not accept on the evidence provided that the sponsor, who coped with her medical conditions with the assistance of her health providers and the support of her family before entering into a relationship with the applicant, could not cope with her medical conditions with the assistance of her health care providers and the support of her family, in his absence. The Tribunal does not find the sponsor's physical conditions to be a compelling reason to waive the Schedule 3 criteria.
51. At hearing the sponsor argued that her mental ill-health compounds the effect of her medical conditions, such that she is dependent on the support of the applicant. She acknowledged that it had not occurred to her to consult with a psychologist until she was encouraged to do so by the applicant. She claimed that she had not realised the extent to which she had been bullied as a child, or the extent to which her depression and anxiety was debilitating, until the applicant encouraged her to seek professional help.
52. Following the hearing a copy of a letter was provided, dated [in] April 2018, from a person with degrees in education, nursing and applied psychology, who states that he is a retired clinical psychologist who sees the occasional patient pro-bono. In this letter, this person advises that he first met the sponsor and the applicant six months previously; that he has consulted with the sponsor on a fortnightly or weekly basis; that the applicant 'has attended all therapy sessions and medical appointments with her', and that she 'presented with extreme depression, anxiety, suicidal ideology, insomnia, loss of appetite and a background of chronic back pain and alcohol abuse'. He advises that the sponsor reported to him that she has drastically reduced her alcohol use since entering into a relationship with the sponsor, but still experiences depression and anxiety. He advises further that 'while progress has been made the possibility of (the applicant's) deportation has provided an extreme setback'; and 'her depression and ideology of self-harm are exacerbated by the thoughts of being separated from (the applicant) on whom she depends'.
53. A letter also dated [in] April 2018 was provided by a general practitioner at the family practice and skin clinic the sponsor attends. This GP advises that the sponsor has seen him for mental health issues; that she 'has been suffering from Severe Anxiety and Depression'; is on medication (30 Mg Cymbalta); and 'in case her mental health gets acutely worse she has

been recommended to contact the mental health crisis team or present to an Emergency Department'. He advises that he was informed that the sponsor's partner is going through immigration issues and may be facing deportation, and that this was affecting her adversely. He advises that the applicant's 'deportation' 'would worsen her mental health significantly'.

54. The Tribunal places little weight on these letters because they were based on the self-reporting of the parties. On the evidence provided, the Tribunal is not convinced that the sponsor has a mental illness such as to render her incapable of living independent from the applicant; of travelling with the applicant; or of visiting the applicant, should she prefer to remain in Australia near her family members and health providers.
55. The Tribunal does not accept that the applicant's claimed poor relationship with his father is a compelling reason to waive the criteria. The Tribunal notes that both parties have been working full-time for most of the last decade. As discussed above, the applicant could have, during his time in Australia, completed [Course 1] and repaid the debt he owes his father. Based on the evasive and vague nature of the evidence provided by the applicant regarding his purported fear of his father, the Tribunal finds that the applicant fabricated or exaggerated his story of alienation and fear of his family in India in order to obtain permanent residence in this country.
56. The applicant claimed he has no family or friends anywhere in India apart from the town where his family lives, and would not be able to cope by himself anywhere else in that country. The Tribunal does not accept that the applicant, who left the country as a twenty-year old, knows or is related to no-one anywhere else in India. In any event, the applicant was able to cope by himself in Australia, a foreign country, while living here as an undocumented non-citizen, for five years. The Tribunal does not find the applicant's claims that he would be alone and unable to cope by himself in his home country to be compelling. Nor does the Tribunal find the applicant's claim that he would suffer financially if he had to return to India and lodge another costly Partner visa application, to be compelling. The Tribunal notes that, at hearing, the applicant stated that he had \$7000 in savings, for such an eventuality.
57. The Tribunal accepts that the applicant has lost touch with the Indian labour market and become used to Australian incomes and lifestyle over the last decade, but does not consider this to be compelling. The Tribunal accepts that the sponsor would prefer not to live in India for the time it would take to process a Partner visa application from that country, and that this could affect the progress of her career as an administrator, but does not consider this a compelling reason to waive the criteria. The Tribunal notes that the sponsor could remain in Australia and communicate with the applicant via phone and internet, and she could visit the applicant.
58. Having considered the evidence and arguments, the Tribunal is not satisfied that there are compelling reasons for not applying the Schedule 3 criteria. Accordingly, the applicant does not meet cl.820.211(2)(d)(ii).
59. Alternative criteria in c.820.211(7), 820.211(8), 820.211(9), 820.221(2), 820.221(3) (death, family violence, child exceptions) are not relevant to the applicant's circumstances, and he has lodged no claims against these criteria.
60. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

61. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Adrienne Millbank
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.09A De facto partner and de facto relationship

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.

Note 1 See regulation 2.03A for the prescribed criteria applicable to de facto partners.

Note 2 The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.

Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits *the* regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.

- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

Schedule 3

3001

- (1) The application is validly made within 28 days after the relevant day (within the meaning of subclause (2)).
- (2) For the purposes of subclause (1) and of clause 3002, the relevant day, in relation to an applicant, is:
 - (a) if the applicant held an entry permit that was valid up to and including 31 August 1994 but has not subsequently been the holder of a substantive visa — 1 September 1994; or
 - (b) if the applicant became an illegal entrant before 1 September 1994 (whether or not clause 6002 in Schedule 6 of the Migration (1993) Regulations applied or section 195 of the Act applies) and has not, at any time on or after 1 September 1994, been the holder of a substantive visa — the day when the applicant last became an illegal entrant; or
 - (c) if the applicant:
 - (i) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or
 - (ii) entered Australia unlawfully on or after 1 September 1994;whichever is the later of:
 - (iii) the last day when the applicant held a substantive or criminal justice visa; or
 - (iv) the day when the applicant last entered Australia unlawfully; or
 - (d) if the last substantive visa held by the applicant was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation — the later of:
 - (i) the day when that last substantive visa ceased to be in effect; and
 - (ii) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision.

3003

If:

- (a) the applicant has not, on or after 1 September 1994, been the holder of a substantive visa; and
- (b) on 31 August 1994, the applicant was either:
 - (i) an illegal entrant; or
 - (ii) the holder of an entry permit that was not valid beyond 31 August 1994;

the Minister is satisfied that:

- (c) the applicant last became an illegal entrant, or, in the case of a person referred to in subparagraph (b)(ii), last became a person in Australia without a substantive visa, because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with the conditions that apply or applied to:
 - (i) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (ii) any subsequent bridging visa; and
- (f) the applicant would have been entitled to be granted an entry permit equivalent to a visa of the class applied for if the applicant had applied for the entry permit immediately before last becoming an illegal entrant or, in the case of a person referred to in subparagraph (b)(ii), if the applicant had applied for the entry permit on 31 August 1994; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) the last entry permit (if any) held by the applicant was not granted subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.

3004

If the applicant:

- (a) ceased to hold a substantive or criminal justice visa on or after 1 September 1994; or

- (b) entered Australia unlawfully on or after 1 September 1994 and has not subsequently been granted a substantive visa;

the Minister is satisfied that:

- (c) the applicant is not the holder of a substantive visa because of factors beyond the applicant's control; and
- (d) there are compelling reasons for granting the visa; and
- (e) the applicant has complied substantially with:
 - (i) the conditions that apply or applied to:
 - (A) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
 - (B) any subsequent bridging visa; or
 - (ii) the conditions that apply or applied to:
 - (A) the last of any substantive visas held by the applicant (other than a condition of which the applicant was in breach solely because the visa ceased to be in effect); and
 - (B) any subsequent bridging visa; and
- (f) either:
 - (i) in the case of an applicant referred to in paragraph (a) — the applicant would have been entitled to be granted a visa of the class applied for if the applicant had applied for the visa on the day when the applicant last held a substantive or criminal justice visa; or
 - (ii) in the case of an applicant referred to in paragraph (b) — the applicant would have satisfied the criteria (other than any Schedule 3 criteria) for the grant of a visa of the class applied for on the day when the applicant last entered Australia unlawfully; and
- (g) the applicant intends to comply with any conditions subject to which the visa is granted; and
- (h) if the last visa (if any) held by the applicant was a transitional (temporary) visa, that visa was not subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.